

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 15, 2005 Session

MURIEL A. RODGERS v. JODY A. RODGERS

**Appeal from the Chancery Court for Rutherford County
No. 02-5326DR Royce Taylor, Judge**

No. M2004-02046-COA-R3-CV - Filed on May 17, 2006

This appeal involves the constitutionality of the Tennessee Department of Human Services' child support enforcement and collection procedures. In September 2003, the Chancery Court for Rutherford County ordered the father to pay \$375 per month in child support directly to the mother. In April 2004, the Department of Human Services issued an ex parte order attempting to require the father's employer to begin deducting both the current and past due child support from his salary and to remit these funds to the Department. The father filed a petition against the wife and the Department requesting the trial court to vacate the Department's orders and to enjoin the Department from issuing further orders or to otherwise modify the final divorce decree. The trial court issued a temporary restraining order and, following a hearing, vacated the Department's orders with regard to the father's child support and enjoined the mother from further attempts to collect child support without first seeking relief from the court. The court also dismissed the Department on the ground that it was not a proper party, and then denied the motion of the Attorney General and Reporter to intervene to defend the constitutionality of the Department's administrative child support enforcement procedures. The Department and the Attorney General appealed to this court. While this appeal was pending, the father and the mother compromised and settled their child support dispute. We have determined that this appeal is now moot because there is no continuing justiciable controversy regarding child support.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Vacated

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

Paul G. Summers, Attorney General and Reporter; Stuart F. Wilson-Patton, Senior Counsel; and Warren A. Jasper, Assistant Attorney General, for the appellants, Tennessee Attorney General and the Tennessee Department of Human Services.

Wm. Kennerly Burger, Ben Hall McFarlin, III, and M. Keith Siskin, Murfreesboro, Tennessee, for the appellee, Jody A. Rodgers.

Diana Benson Burns, Murfreesboro, Tennessee, for Muriel A. Rodgers.

OPINION

I.

Jody A. Rodgers and Muriel Ann Rodgers were married in June 1987. Their only child was born five months later. In September 2002, Ms. Rodgers filed for divorce in the Chancery Court for Rutherford County. Following a trial in June 2003, the trial court entered a final divorce decree on September 5, 2003 granting Ms. Rodgers a divorce on the ground of inappropriate marital conduct. The court also mandated a shared custody arrangement that envisioned that the parties' child would reside with each parent essentially equal amounts of time. In light of the shared parenting, the trial court ordered Mr. Rodgers to pay \$375 per month in child support directly to Ms. Rodgers.

The parties and their 15-year-old son moved to Bedford County following the divorce. Despite the trial court's order, Mr. Rodgers declined to pay any child support to Ms. Rodgers. On March 22, 2004, Ms. Rodgers submitted a handwritten affidavit to the Bedford County office of the Tennessee Department of Human Services stating that Mr. Rodgers had told her that he would never pay child support and that, in fact, he had paid no child support since June 2003.¹ Based on this affidavit, the Department determined that Mr. Rodgers's child support arrearage was \$3,375. On April 2, 2004, the Department issued an "Order/Notice to Withhold Income for Child Support" to Titan Mortgage Company, Mr. Rodgers's last known employer, directing the company to begin deducting \$562.50 per month² from Mr. Rodgers's wages and to pay these funds to the Department.³

The Department filed a copy of this "Order/Notice" with the trial court. It also notified Mr. Rodgers of its action and informed him of his right to request an administrative appeal. On April 15, 2004, Mr. Rodgers faxed a request for an administrative hearing to the Department asserting as grounds for his appeal that "DHS does not have jurisdiction to modify ct. [court] orders." On April 22, 2004, the Department acknowledged the receipt of Mr. Rodgers's appeal and informed him that a hearing would be convened in due course.⁴

On April 17, 2004, after Titan Mortgage informed the Department that Mr. Rodgers was no longer an employee, the Department issued a second "Order/Notice" to First Community Mortgage, Inc. requesting the company to begin deducting \$562.50 per month from Mr. Rodgers's wages and to pay these funds to the Department. Like Titan Mortgage, First Community Mortgage informed the Department that Mr. Rodgers was no longer an employee. As far as this record shows, the Department has not issued another "Order/Notice" to any other employer of Mr. Rodgers.

¹This affidavit was not in the form required by Tenn. Comp. R. & Regs. 1240-2-2-.11 (2005).

²This amount included Mr. Rodgers's court ordered \$375 monthly child support payment and an additional \$187.50 payment for the child support arrearage.

³This "Order/Notice" was issued in accordance with Tenn. Code Ann. § 36-5-501(b)(1)(D) & (E) (2005); Tenn. Comp. R. & Regs. 1220-2-2-.03(4), -.04 (2005).

⁴The record does not indicate whether the Department ever afforded Mr. Rodgers an administrative hearing.

On April 27, 2004, Mr. Rodgers filed a petition in the trial court against Ms. Rodgers and the Department requesting the trial court to vacate the Department's "Order/Notice" and to enjoin the Department from "enforcing the aforementioned order, and/or attempting to modify any other Order of this Court." Mr. Rodgers also requested the trial court to declare Tenn. Code Ann. § 36-5-501(b)(1) (2005) unconstitutional because it violated the Separation of Powers doctrine and the Due Process Clause of the state and federal constitutions. The trial court issued a temporary restraining order enjoining the Department from "taking any actions to enforce the Administrative Order regarding JODY A. RODGERS issued on April 1, 2004" and from "attempting to modify any other Orders of this Court." It also set a hearing for May 10, 2004.

On May 4, 2004, the Department filed a motion to dissolve the temporary restraining order. The Department argued (1) that the order itself was defective, (2) that the Department was not a proper party to the proceeding, and (3) that the Department had not been properly joined as a party. The trial court heard the Department's motion on May 5, 2004 and, on May 10, 2004, filed an order concluding (1) that the Department lacked authority to change the court's child support orders, (2) that the Department was not a proper party to the proceedings, and (3) that the Department could no longer represent Ms. Rodgers because it had a conflict of interest. Accordingly, the trial court declared the Department's April 1, 2004 "Order/Notice" "null and void *ab initio*," dismissed the Department as a party, and enjoined Ms. Rodgers from "taking any action to collect child support until such time as she files a Petition in this Court requesting relief." The court also denied the Department's oral motion for a Tenn. R. App. P. 9 interlocutory appeal with regard to its decision that the Department lacked authority to modify child support orders.

On June 8, 2004, the Department filed a Tenn. R. Civ. P. 59.04 motion, and the Attorney General and Reporter moved to intervene in the case to defend the constitutionality of Tenn. Code Ann. § 36-5-501(b)(1). Following a hearing on June 25, 2004, the trial court mailed the parties a letter denying the Department's post-trial motion as well as the Attorney General's motion to intervene. An order consistent with the letter was entered on July 21, 2004.⁵ Both the Department and the Attorney General filed timely notices of appeal from the July 21, 2004 order.⁶

In the meantime, on June 28, 2004, Ms. Rodgers filed a criminal contempt petition against Mr. Rodgers for willful failure to pay \$4,500 in child support. On August 8, 2004, Mr. Rodgers responded to the contempt petition, asserting that he had "provided support for the parties' minor child above and beyond the arrearage amount currently requested by the Plaintiff." He later filed a counter-petition against Ms. Rodgers seeking to hold her in contempt for failing to turn over a \$7,259 dining room table that had been awarded to him in the divorce. The parties eventually compromised and resolved their dispute over child support, and on February 14, 2005, the trial court entered an order stating, in part:

⁵The Department later took issue with the part of the order that taxed the costs to the State. On August 20, 2004, the trial court entered an order removing the taxation of costs to the State from the July 21, 2004 order.

⁶On August 20, 2004, the Department and the Attorney General also filed an application for a Tenn. R. App. P. 10 extraordinary appeal with this court. We denied the application on August 30, 2004, noting that they were entitled to an appeal of right from the July 21, 2004 order.

the parties have reached an agreement and their agreement appearing proper, it is hereby ORDERED, ADJUDGED and DECREED that Defendant shall convey to Plaintiff the 1989 BMW 235 [sic], free and clear of any outstanding lien, in satisfaction of the outstanding child support. The Petition for Contempt shall be dismissed with the costs taxed against the Defendant.⁷

II.

Mr. Rodgers, the party who originally challenged the constitutionality of Tenn. Code Ann. § 36-5-501(b)(1), now seeks to abandon his claim. He suggests that the case is now moot because he and Ms. Rodgers have settled their dispute over child support. While it is not commonplace for a plaintiff to suggest mootness, we have determined that Mr. Rodgers's suggestion is well taken.

A.

Tennessee's courts do not have a constitutional limitation on their jurisdiction similar to the "case or controversy" requirement in Article III of the United States Constitution. They have, however, recognized justiciability doctrines similar to those developed by the United States Supreme Court to determine when courts should hear a case. 13 CHARLES A. WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3529 (2d ed. 1984); Barbara Kritchevsky, *Justiciability in Tennessee, Part One: Principles and Limits*, 15 Mem. St. U.L. Rev. 1, 3 n.5 (1984). These doctrines address not only the court's power to hear a case, but also the wisdom of doing so. *Renne v. Geary*, 501 U.S. 312, 316, 111 S. Ct. 2331, 2336 (1991); *Martin v. Washmaster Auto Ctr., Inc.*, No. 01A01-9305-CV-00224, 1993 WL 241315, at *1 (Tenn. Ct. App. July 2, 1993) (No Tenn. R. App. P. 11 application filed). In this way, they provide self-imposed common-law rules promoting judicial restraint. 1 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 2.13, at 174 (3d ed. 1999) (ROTUNDA & NOWAK).

The doctrine of justiciability prompts the courts to stay their hand in cases that do not involve a genuine, existing controversy. *State ex rel. Lewis v. State*, 208 Tenn. 534, 537, 347 S.W.2d 47, 48 (1961); *McIntyre v. Traugher*, 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994). Thus, Tennessee's courts will not render advisory opinions, *City of Memphis v. Shelby County Election Comm'n*, 146 S.W.3d 531, 539 (Tenn. 2004); *Parks v. Alexander*, 608 S.W.2d 881, 892 (Tenn. Ct. App. 1980, or decide abstract legal questions. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 192 (Tenn. 2000); *Miller v. Miller*, 149 Tenn. 463, 474, 261 S.W. 965, 968 (1924).

To be justiciable, an issue must arise from a real controversy between persons with real and adverse interests. *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511, 512 (Tenn. 1974); *Cummings v. Beeler*, 189 Tenn. 151, 156, 223 S.W.2d 913, 915 (1949). A justiciable dispute

⁷ No issue has been raised on this appeal regarding this order's compliance with the child support guidelines. Accordingly, this opinion should not be construed to approve the practice of rectifying a child support arrearage through the transfer of ownership of a used car.

involves present rights that have accrued under presently existing facts. *Oldham v. Am. Civil Liberties Union Found. of Tenn., Inc.*, 910 S.W.2d 431, 434 (Tenn. Ct. App. 1995); *Third Nat'l Bank v. Carver*, 31 Tenn. App. 520, 527, 218 S.W.2d 66, 69 (1948). Thus, especially with regard to constitutional issues, the courts will refrain from deciding cases in the absence of an actual controversy requiring them to address the issue. *West v. Carr*, 212 Tenn. 367, 382, 370 S.W.2d 469, 475 (1963); *Miller v. Miller*, 149 Tenn. at 476-77, 261 S.W. at 969.

The requirements for litigation to continue are essentially the same as the requirements for litigation to begin. *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d 333, 338 (Tenn. Ct. App. 2005). Thus, an issue must remain justiciable throughout the entire course of the litigation, including any appeal. *State v. Ely*, 48 S.W.3d 710, 716 n.3 (Tenn. 2001); *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d 615, 616 (Tenn. Ct. App. 1998); 1 ROTUNDA & NOWAK § 2.13, at 186. A moot case is one that has lost its justiciability because it no longer involves a present, ongoing controversy. *McCanless v. Klein*, 182 Tenn. 631, 637, 188 S.W.2d 745, 747 (1945). A case will be considered moot if it no longer serves as a means to provide some sort of judicial relief to the prevailing party. *Knott v. Stewart County*, 185 Tenn. 623, 626, 207 S.W.2d 337, 338-39 (1948); *McIntyre v. Traughber*, 884 S.W.2d at 137.

Determining whether a case is moot is a question of law. *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d at 338-39. When an appellate court determines that a case has become moot and that it does not fit into one of the exceptions to the mootness doctrine,⁸ the court will ordinarily vacate the judgment below and remand the case to the trial court with directions that it be dismissed. *Ford Consumer Fin. Co. v. Clay*, 984 S.W.2d at 617; *McIntyre v. Traughber*, 884 S.W.2d at 138. However, if the case fits within one of the recognized exceptions to the mootness doctrine, the appellate court may, in its discretion, reach the merits of the issues in spite of the fact that the case has become moot. *Alliance for Native Am. Indian Rights in Tenn., Inc. v. Nicely*, 182 S.W.3d at 339.

B.

The substantive dispute in this case involves the payment of child support. Ms. Rodgers claimed that Mr. Rodgers had not paid any of the child support ordered by the court, while Mr. Rodgers asserted that he had provided support of the parties' child in excess of the amount Ms. Rodgers claimed to be past due. Mr. Rodgers and Ms. Rodgers have now compromised and settled this dispute, and thus the courts can no longer grant any sort of meaningful relief to Ms. Rodgers. Therefore, the substantive issue regarding Mr. Rodgers's obligation to pay back child support is moot.

⁸*Office of the Att'y Gen. v. Tenn. Regulatory Auth.*, No. M2003-01363-COA-R12-CV, 2005 WL 3193684, at *5 (Tenn. Ct. App. Nov. 29, 2005) (No Tenn. R. App. P. 11 application filed) (discussing the three most common exceptions to the mootness doctrine – issues of great public importance, issues affecting the administration of justice, and issues capable of repetition yet evading review).

This case also spawned a dispute between Mr. Rodgers and the Department regarding the constitutionality of the Department's administrative procedures for the enforcement and collection of back child support. While this dispute has not been voluntarily resolved, Mr. Rodgers, the party who raised the constitutional question in the first instance, has now signaled that he desires to retire from the field because his underlying dispute with Ms. Rodgers has been resolved. Mr. Rodgers's actions call into question whether Mr. Rodgers and the Department continue to have adverse interests.

In addition to Mr. Rodgers's disinclination to pursue his constitutional challenge to Tenn. Code Ann. § 36-5-501(b)(1), other factual circumstances call into question whether this case provides an appropriate vehicle for addressing the constitutionality of Tenn. Code Ann. § 36-5-501(b)(1). The courts should refrain from addressing constitutional issues when a case can be decided on non-constitutional grounds. *State v. Thompson*, 151 S.W.3d 434, 442 (Tenn. 2004); *Wilson v. Wilson*, 984 S.W.2d 898, 902 (Tenn. 1998). The record indicates that the Department never succeeded in serving Mr. Rodgers's employer with an "Order/Notice" that would have obligated the employer to begin withholding child support from his paycheck. Without effective service of an "Order/Notice" on an employer, the Department had no basis for requiring Mr. Rodgers's employer to remit his child support to the Department. Thus, were we to address the substance of this dispute, we would have decided it in Mr. Rodgers's favor based on the facts without addressing the constitutional issues.

The Department is concerned that the actions of the trial judge in this case will be duplicated by other judges in other cases. Thus, it views this case as a vehicle for obtaining an appellate court's holding that Tenn. Code Ann. § 36-5-501(b)(1) does not violate the Separation of Powers doctrine or the Due Process Clause. However, a party's desire for an opinion to be used in future cases is not, by itself, sufficient to render a case justiciable. Tennessee's courts do not render advisory opinions. *State v. Brown & Williamson*, 18 S.W.3d at 192; *Combustion Eng'g Co. v. Thompson*, 191 Tenn. 98, 105, 231 S.W.2d 580, 583 (1950). Accordingly, we find that this case is moot.

III.

Based on our conclusion that this case is moot, we vacate the orders entered on April 27, 2004, May 10, 2004, and July 21, 2004, and remand the case to the trial court with directions to dismiss Mr. Rodgers's April 27, 2004 petition challenging the constitutionality of Tenn. Code Ann. § 36-5-501(b)(1). We also tax the costs in equal proportions to Jody A. Rodgers and the State of Tennessee for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.